

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	CASE NO. 11-cv-01095-HE
v.)	
)	
KIDS R US LLC.,)	
)	
Defendant.)	

CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission ("EEOC") commenced this action alleging that Defendant Kids R Us LLC, ("Kids R Us" or "Defendant") discriminated against Shawna Capps, Melissa Capps, and Dana Finley (hereinafter "Charging Parties," unless specifically identified) in subjecting Shawna Capps to unlawful discrimination on the basis of her sex (pregnancy), and in unlawfully retaliating against Shawna Capps, Melissa Capps, and Dana Finley, in violation of Title VII of the Civil Rights Act of 1964, as amended. Kids R Us has filed its Answer and denies all of the EEOC's claims.

For purposes of settlement and compromise only, the parties have advised the Court that they wish to resolve the instant controversy without the expense, delay, and burden of further litigation. The parties acknowledge that the negotiated settlement of this lawsuit and entry of this Consent Decree constitutes neither an adjudication on the merits of the action nor an admission of Kids R Us as to liability.

THEREFORE, it is the finding of this Court, made on the pleadings, the record as a whole, and upon agreement of the parties, that: (i) this Court has jurisdiction over the parties to and the subject matter of this action; (ii) the requirements of Title VII shall be carried out by the entering of this Decree; (iii) this Decree is intended to and does resolve all matters arising under Title VII in this lawsuit; and (iv) the terms of this Decree constitute a fair and equitable settlement of all issues arising under Title VII, as amended, in this lawsuit.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

I. General Provisions

1. The Consent Decree is being entered by and with the consent of the parties for purposes of settlement.
2. Defendant shall not discriminate against any applicant or employee ("employee") on the basis of sex or because that applicant or employee is pregnant.
3. Defendant shall not retaliate against any person because such person has: (i) opposed any employment practice alleged to constitute unlawful discrimination under Title VII; (ii) participated in an investigation concerning or related to allegations of such discrimination; and/or (iii) participated in this lawsuit and/or the underlying EEOC investigation of the charges which formed the predicate for this lawsuit; to wit: *Shawna Capps, Melissa Capps & Dana Finley v. Kids R Us*, EEOC Charge Nos.: 564-2010-01111; 564-2010-00883; 564-2010-01113; and 564-2010-01112.

4. Defendant shall not retaliate against any person because such person is associated with or related by blood or marriage to any person whom Defendant is prohibited from retaliating against as provided by Section I-3.

II. Relief for Charging Party

A. Monetary Relief

1. In settlement of their Title VII claims, the Defendant will pay to the three (3) Charging Parties the total monetary amount of seventy-five thousand dollars (\$75,000.00), or twenty-five thousand dollars (\$25,000.00) per individual Charging Party. The terms of payment are as follows:

- i. Due to the demonstrated financial condition of the Defendant, the Parties agree that a plan for incremental monthly payment by Defendant to Charging Parties over an established period is necessary and appropriate to allow for full payment of the agreed monetary settlement of this case;
- ii. It is agreed that Defendant will pay \$75,000.00 (seventy-five thousand dollars) total, or \$25,000.00 (twenty-five thousand dollars) per individual Charging Party, over a period of five (5) years (60 months) at the rate of \$1,250 total paid per month, or \$416.67 per month to each Charging Party. It is further agreed that 100% of these payments will be reported to tax authorities on 1099s as compensation for alleged nonwage damages.

- iii. Within fifteen (15) days of the date of entry of the Consent Decree, Defendant shall pay, by check, mailed to the physical home address of each individual Charging Party, the first monetary installment under the payment plan set forth herein. Subsequently, each payment shall be made on the first day of each new month until paid in full.
- iv. **Acceleration Clause.** If any payment under this installment plan is not paid by Defendant within five (5) days of the day it is due, then the EEOC will notify Defendant in writing that it is in default of a payment under the installment plan. If Defendant fails to timely cure the default as requested in the written notification, then, without additional notice or demand, the entirety of the settlement principal then unpaid shall become immediately due and payable.
- v. **Reservation of Right to Make Full Payment Without Penalty.**

Upon written notice to the EEOC that Defendant's financial circumstances have changed, it is agreed that the balance of the \$75,000.00 total settlement amount may be prepaid by Defendant without penalty, either in whole or in part, at any time prior to full payment under the installment plan set forth herein. In the event of early, full payment, the term of the Consent Decree shall be reduced to a term of three (3) years from the date of entry by the Court.

- vi. Defendant designates the following individual as plan administrator for purposes of overseeing timely payments and compliance with the terms of this agreement, as well as receiving, taking account of and responding to any concerns, notifications, address changes or other issues relating to the plan, or payments made thereto:

Diane Ketterling
13648 Redbud Road, Choctaw, OK 73020
Phone 405-606-9032

Email dogsrfriends8@yahoo.com

Defendant will promptly notify Plaintiff, in writing, in the event Defendant names a new or different plan administrator.

B. Confirmation of Compliance

1. Within fifteen (15) days of the entry of the Consent Decree, Defendant shall deliver to Patrick Holman, Trial Attorney, EEOC, Oklahoma City Area Office, 215 Dean A. McGee Ave., Ste. 524, Oklahoma City, OK., 73102, counsel of record for Plaintiff EEOC, a photocopy of the initial checks to Charging Parties, described in Paragraph II.A.1 (iii).

III. Injunctive Relief, Training, Reporting and Monitoring

A. Notice Posting and Policy

1. Within fifteen (15) days of the entry of the Consent Decree, Defendant shall sign and post a Notice, attached hereto as Exhibit A, where notices to employees and/or applicants for employment are customarily posted upon the premises of each

Kids R Us location. Such Notice shall remain posted for one (1) year following the date of the Court's entry of the Decree.

2. Within thirty (30) days of the entry of the Consent Decree, Defendant will forward a copy of its employment policy addressing anti-pregnancy discrimination and retaliation to Plaintiff c/o Patrick Holman, Trial Attorney, EEOC, Oklahoma City Area Office, 215 Dean A. McGee Ave., Ste. 524, Oklahoma City, OK., 73102, counsel of record for Plaintiff EEOC, for review, revision if necessary, and approval. Within fifteen (15) days of Plaintiff's final approval of the policy, Defendant shall provide a hardcopy of the approved anti-pregnancy discrimination and anti-retaliation policy to all employees, both management and non-management ("all employees"), at each Kids R Us location.

B. Training

1. Within thirty (30) days of the entry of the Consent Decree by the Court, Defendant shall provide in writing the contact information for one or more reputable entities or individuals knowledgeable about Title VII of the Civil Rights Act of 1964, as amended, and employment law, and experienced in and skilled at providing live training on the same, along with a detailed description of the proposed training curriculum, to Patrick Holman, Trial Attorney, EEOC, Oklahoma City Area Office, 215 Dean A. McGee Ave., Ste. 524, Oklahoma City, OK., 73102, counsel of record for Plaintiff EEOC, for consideration and approval.

2. Within the first year of the Consent Decree, Defendant shall provide two (2) hours of live anti-discrimination training to all its employees at each Kids R Us facility. Such training shall be provided by the entity approved pursuant to Paragraph III.B.1, above, and shall emphasize Title VII's prohibition against pregnancy discrimination and against retaliation. Such training shall include instruction on how to contact the EEOC Oklahoma City Area Office in order to obtain information or to file a charge of employment discrimination and how to access the EEOC's website at www.eeoc.gov.

3. Defendant shall, in each succeeding year of the five (5) year term of the Consent Decree, provide at least one (1) hour of live anti-discrimination refresher training to all employees, including all newly hired employees, by a vendor approved pursuant to Paragraph III.B.1, above.

C. Reporting & Monitoring

1. Within fifteen (15) days of compliance, Defendant shall mail to the EEOC a statement signed by its Chief Executive Officer or Owner(s) certifying compliance with terms relating to the posting of notice and the dissemination of approved anti-discrimination and anti-retaliation policies, as described in Paragraphs III.A.1 and 2, above. Such statement shall be addressed to: Patrick Holman, Trial Attorney, EEOC, Oklahoma City Area Office, 215 Dean A. McGee Ave., Ste. 524, Oklahoma City, OK, 73102, counsel of record for Plaintiff EEOC.

2. Within fifteen (15) days of compliance with the annual training requirement(s) described in Paragraph III.B.2 and 3, above, Defendant shall provide a statement signed by its Chief Executive Officer or Owner(s) certifying compliance with such training requirement. Such certification shall be delivered to: to Patrick Holman, Trial Attorney, EEOC, Oklahoma City Area Office, 215 Dean A. McGee Ave., Ste. 524, Oklahoma City, OK., 73102, counsel of record for Plaintiff EEOC. Such certification shall include copies of any and all documents used in the training, including but not limited to the previously approved training agenda or syllabus and the completed Certification of Training Attendance, attached hereto as Exhibit B.

3. Within fifteen (15) days of any internal, informal or formal, complaint of pregnancy discrimination or retaliation by any applicant or employee which is received during the term of the Consent Decree, Defendant shall provide a report, signed by its Chief Executive Officer, certifying the name and full contact information of the complaining individual, the date of the complaint, the individual(s) to whom the complaint was made, a brief description of the complaint, and a brief description of any actions taken in response to the complaint. Such report shall be timely delivered to: to Patrick Holman, Trial Attorney, EEOC, Oklahoma City Area Office, 215 Dean A. McGee Ave., Ste. 524, Oklahoma City, OK., 73102, counsel of record for Plaintiff EEOC.

IV. Term and Effect of Decree

1. By entering into the Consent Decree, the parties do not intend to resolve any claims of discrimination other than those within the charges filed with the EEOC, which formed the foundation for the Complaint in this action.

2. Unless otherwise specified herein, the term of the Consent Decree shall be five (5) years during which term the Court shall retain jurisdiction for compliance and enforcement purposes. Upon the expiration of the Consent Decree, this case and all claims and causes of action brought in this case will automatically be deemed to have been dismissed with prejudice, pursuant to Fed. R. Civ. P. 41(a).

3. The Consent Decree shall be binding upon the parties hereto, their successors and assigns. Defendants shall notify any successors and assigns, including but not limited to any and all purchasers or prospective purchasers, of the obligations of the Consent Decree during the five (5) year term of the Consent Decree.

4. The parties shall bear their own costs and attorneys' fees.

SO ORDERED:

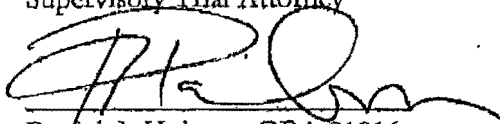


U.S. DISTRICT JUDGE JOE HEATON

Respectfully submitted,

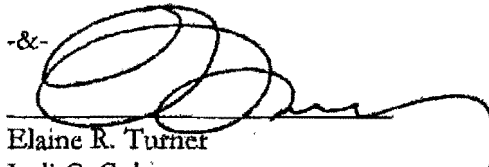
BARBARA A. SEELY
Acting Regional Attorney

C. FELIX MILLER
Supervisory Trial Attorney



Patrick J. Holman, OBA 21216
Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Oklahoma City Area Office
215 Dean A. McGee Ave., Suite 524
Oklahoma City, OK 73102
(405) 231-4363
(405) 231-5816 (fax)
Patrick.holman@eoc.gov

Counsel for Plaintiff EEOC

-&-


Elaine R. Turner
Jodi C. Cole
Hall Estill
100 North Broadway
Chase Tower, Suite 2900
Oklahoma City, Oklahoma 73102
Phone: 405-553-2828
Fax: 405-553-2855
ETurner@HallEstill.com (e-mail)
jcole@hallestill.com (e-mail)

Attorneys for Defendant

EXHIBIT A

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Oklahoma Area Office**



215 Dean A. McGee Ave, Ste 524
Oklahoma City, OK 73102
TDD (405) 231-4354
FAX (405) 231-4125

NOTICE

This NOTICE is being posted as part of a Consent Decree between Kids R Us LLC and the U.S. Equal Employment Opportunity Commission (EEOC).

Federal law requires that there be no discrimination against any employee or applicant for employment because that person is pregnant with respect to hiring, compensation, promotion, discharge, or other terms, conditions or privileges of employment. Refusing to hire, demoting, suspending, laying off, and/or terminating the employment of an individual employee because she is pregnant is specifically prohibited.

Kids R Us LLC will comply with all federal laws regarding employment, particularly Title VII of the Civil Rights Act of 1964, as amended, and will not discriminate against an individual with regards to her pregnancy in hiring, compensation, promotion, discharge, or other terms, conditions, or privileges of employment.

Further, Kids R Us LLC will not take any action against any person because they, or someone associated with them (e.g. friend, relative, in-law, etc.), have exercised their rights under the law. Should you be retaliated against because you, or someone associated with you, have opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, or for having filed a charge of discrimination, testified, assisted, or participated in an investigation, proceeding, or litigation under Title VII or in any other way been discriminated against while employed by or applying for employment with Kids R Us LLC, you may seek assistance from:

U.S. Equal Employment Opportunity Commission
Oklahoma Area Office

215 Dean A. McGee Ave., Suite 524
Oklahoma City, Oklahoma 73102
Telephone Number (405) 231-4911

This NOTICE will remain posted until July 12, 2013, by direction of the Equal Employment Opportunity Commission.

SIGNED Holly Waldron Cole on this 10 day of July, 2012
Holly Waldron Cole, Director, EEOC Oklahoma Area Office

EXHIBIT B [Kids R Us letterhead]

Certification of Training Attendance

Each of the undersigned employees certifies receipt of the number of hours indicated of training on Title VII and other prohibited discrimination in the workplace.

PLEASE SIGN AND DATE LEGIBLY.

NAME AND TITLE	DATE & HOURS ATTENDED
----------------	-----------------------

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Page ____ of ____ pages